

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA UPHOLDING THE APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY THE USE PERMIT FOR THE VALERO CRUDE BY RAIL PROJECT AT 3400 EAST SECOND STREET (12PLN-00063)

WHEREAS, on December 21, 2012, Valero Refinery requested use permit approval for the Valero Crude by Rail (CBR) Project at 3400 East Second Street; and

WHEREAS, the Planning Commission held a public hearings on February 8, 9, 10, and 11, 2016, at which it considered and discussed the Final EIR, the Mitigation Monitoring and Reporting Program, the staff report, and the proposed use permit with conditions of approval for the CBR Project, and heard testimony from members of the public regarding the documents and the proposed use permit; and

WHEREAS, the Planning Commission adopted Resolution No. 16-1 and denied certification of the Final EIR and denied the use permit for the CBR Project on February 11, 2016; and

WHEREAS, on February 29, 2016, Valero Refinery filed a timely appeal of the Planning Commission decision stating that the denial was based on grounds either preempted by federal law, contrary to governing law and/or not supported by substantial evidence in the record; and

WHEREAS, the City Council has reviewed and considered the appeal of the Planning Commission's decision include the CBR application, staff report, Final EIR and related documents and information presented at the public hearings.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia makes the following findings based on the Valero Crude by Rail Project application, the staff report, the Final EIR, the appeal and related documents, and information presented at the public hearings on March 15, 2016, April 4, 2016, April 18, 2016, April 19, 2016 and September 20, 2016:

1. *That the proposed location of the use is in accord with the objectives of the City of Benicia Zoning Ordinance set forth as Title 17 of the Municipal Code, and the purposes of the district in which the site is located.*

The proposed project meets the objectives of the Zoning Ordinance and the purposes of the General Industrial (IG) zoning district as outlined in Sections 17.04.030 and 17.32.010 of the Zoning Ordinance as follows:

The specific purpose of the IG zoning district is "to provide sites for the full range of manufacturing, industrial processing, general service, and distribution uses deemed suitable for location in Benicia; and to protect Benicia's general industrial areas, to the extent feasible, from disruption and competition for space from unrelated retail and commercial uses that could more appropriately be located elsewhere in the city.

Performance standards will minimize potential environmental impacts."

The Refinery, as a use that manufactures products (fuels) by processing raw materials (crude oil and gas oil), is consistent with the purpose of the IG district in that the Project would enhance the Refinery's ability to fulfill that purpose. The Project would consist of changes and improvements to an existing industrial use in an existing industrial district. The project's improvements would be constructed within the existing Refinery footprint, and as mitigated and conditioned would meet performance standards set forth in Section 17.70.240 of the Zoning Ordinance to ensure that development projects conform with all applicable air and water quality regulations and do not create hazards or problems related to noise, glare, hazardous materials, heat and humidity or electromagnetic interference.

The Project would not have service demands that exceed the capacities of existing streets, utilities or public services. The Project would not have an effect on views of the shoreline and undeveloped hillsides and ridgelines as the new rail car unloading rack would be much shorter than the adjacent development blocking their visibility from most of the off-site viewpoints. The project would have no effect on the City's architectural and cultural resources. The project would not affect existing open space nor would it interfere with future open space plans of the City.

The project would support the Refinery in its ability to remain competitive in the marketplace and into the future. It would also provide an estimated 121 temporary construction jobs and up to 20 permanent full-time jobs, thereby strengthening the City's economic base. The addition of no more than 20 new employees or contractors would not cause or make a significant contribution to excessive population densities.

- 2. That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to*

the neighborhood of the use, nor detrimental to the properties or improvements in the vicinity or to the general welfare of the city.

The EIR, together with the conditions of approval set forth herein and discussed in the staff report, show that the Project, as mitigated and conditioned, would be consistent with all applicable goals and policies of the General Plan. For areas of impact within City purview, the Project would not be detrimental to public health, safety, and welfare because the impacts of the project would be mitigated by measures that are incorporated into the project or that are required by the conditions of approval. In addition the proposed change of shipment from marine vessel to rail car for up to 70,000 barrels per day will result in a net decrease in the amount of greenhouse gas emissions in the Bay Area. The mitigation monitoring and reporting program will ensure that the project is consistent with implementing Program 2.36.A of the General Plan and enhancing the public health, safety, and welfare.

3. *That the proposed conditional use will comply with the provisions of the Zoning Ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located.*

As shown by the Use Permit Findings 2 and 3 and the discussion in the staff report, the Project as mitigated and conditioned would comply with the provisions of the Zoning Ordinance. There are no specific conditions required for oil and gas refining in the IG district except that a use permit is required.

As set forth above, the findings can be made for the Project, as mitigated and with the proposed conditions of approval.

BE IT FURTHER RESOLVED THAT the City Council of the City of Benicia hereby upholds the appeal and approves the proposed project subject to the following conditions:

COMMUNITY DEVELOPMENT DEPARTMENT

1. This approval shall expire two years from the date of approval, unless made permanent by the issuance of a building permit and the commencement of work that is diligently pursued to completion. Alternatively per Benicia Municipal Code Section 17.104.090, the time period may be extended up to one year, by the Community Development Director, if the application for time extension is received prior to the end of the initial two year deadline and there has been no change in the City's development policies which affect the site, and

there has been no change in the physical circumstances nor new information about the project site which would warrant reconsideration of the approval.

2. The scope of approval is limited to the Crude by Rail Project as described in the Use Permit Application (12PLN-00063), submitted by Valero to the City of Benicia, as updated, and the Final Environmental Impact Report prepared by ESA, January 2016.
3. The plans submitted for the building permit and construction shall substantially comply with the plans stamped received January 11, 2016, consisting of seven (7) sheets marked Exhibit B, except as modified by the following conditions. Any change from this approval including substitution of materials, shall be requested in writing and approved by the Community Development Director, or designee, prior to changes being made in the field.
4. This approval is based in part on the assumption, consistent with any conditions of approval imposed by the BAAQMD, that there will be no increase in overall refinery emissions as a result of the CBR project. A change in the project that would result in such an emission increase shall require a use permit amendment with associated CEQA review.
5. The Refinery shall provide the City with copies of any application to the BAAQMD for a new Authority to Construct or any amendment to an existing Authority to Construct for any part of the CBR project, so that the City may evaluate the proposals for consistency with the scope of the use permit approval and the CBR environmental analysis.
6. All of the adopted mitigation measures set forth in the certified Environmental Impact Report are hereby incorporated by reference as conditions of approval of the use permit. The Mitigation Monitoring and Reporting Program dated January 2016, adopted by the City Council on September 20, 2016, and attached hereto as Exhibit B, is hereby incorporated and included as a condition of the use permit approval to ensure that the mitigation measures identified in the Environmental Impact Report are complied with during project implementation.
7. The plans submitted for the building permit and construction shall include final details and design of proposed exterior lighting fixtures of the new unloading rack for review and approval by the Community Development Department.

PUBLIC WORKS DEPARTMENT, ENGINEERING

8. Prior to building permit issuance, the Refinery shall submit Stormwater Pollution Prevention Plans to the City of Benicia as required by the City's Grading Ordinance.
9. All stormwater from the project area shall be bio-retained and drain into existing permitted drainage outfalls and not into the City's storm drain system.
10. All sloped area associated with the project area shall be protected with landscaping in order to minimize soil erosion.

FIRE DEPARTMENT

11. Pursuant to the Operational Aid Agreement between the City of Benicia and the Valero Refinery, the following is required:
 - a. Prior to operation of the subject crude oil unloading rack, the City shall provide confirmation of existence and functionality of Opticom (3m) transmitters at all stoplights along the entire route of travel from Fire Station 11 (150 Military West) along Military West, East 2nd Street, and Industrial Way to Park Road. Where Opticom receivers on the route previously described do not exist, the applicant shall be responsible for providing them to the City of Benicia for installation. The Refinery shall be responsible for any labor and equipment costs associated with the installation of any upgraded or new receivers required at these locations. The City shall be responsible for the ongoing maintenance of all transmitters and receivers.
 - b. Prior to commencement of operation of the subject crude oil unloading rack and building permit final, the Refinery shall provide Opticom transmitters on all fire suppression units, including incident command vehicles. The City will assess the fleet of emergency response vehicles to ensure the presence of appropriate Opticom transmitters. Where Opticom transmitters on the emergency vehicles do not exist, the Refinery shall be responsible for providing them to the City of Benicia for installation. The City shall be responsible for the ongoing maintenance of all transmitters and receivers.
 - c. The Refinery's onsite emergency response team will assist Benicia Fire Department by responding to off-site emergencies within the

Park Road and Bayshore Road industrial areas if an emergency occurs during the event of a train crossing on Park Road.

12. The Refinery shall provide communications to emergency responder agencies with the City of Benicia as to the blockage of normal travel routes due to the presence of a Refinery train at the intersection of Bayshore and Park Road. The Refinery shall provide, install and maintain camera(s) at specified location(s) determined by the City. The camera(s) shall meet City standards and will have real-time connection to the dispatch center(s) providing services for Benicia Police and Fire. Ongoing maintenance of the cameras for the life of the project shall be the responsibility of the Refinery.
13. The plans submitted for building permit and construction shall include a minimum of 3 complete sets of construction drawings for review and approval by the Benicia Fire Department. The construction drawings submitted to the Benicia Fire Department for review and approval shall include, but not be limited to, the following:
 - a. Fire water mains, fire hydrants, fire water monitors, roadways, etc.
 - b. Service road A shall be shown as all weather, minimum of 20 feet in width, 13' 6" overhead clearance and able to support 80,000 pounds (503) CFC.
 - c. Documentation that the proposed containment wall's total capacity and conformance with API standards/recommendations and 3404.2.10 through 3404.2.10.5 of the CFC.
 - d. Details of the unloading of the tank cars including, but not limited to, spill prevention and impounding of materials. The details must show the method of recovery of spilled materials during the coupling and uncoupling of the hoses.

STANDARD CONDITIONS

14. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia, unless preempted by federal or state law.
15. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director's, Historic Preservation Review Commission or any other department, committee, or agency of the City concerning a development, variance, permit or land

use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

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On motion of Council Member _____, seconded by Council Member _____, the above Resolution was adopted at a regular (or continued regular) meeting of said City Council held on September 20, 2016, and adopted by the following vote:

Ayes:
Noes:
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

Date: